

## Chapter 5

# CONSULTATION AND COORDINATION

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**Marble Bluff Dam**



Photograph by Jim Bailey

**Inflow to Pyramid Lake**



Photograph by Jim Bailey

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## **Chapter 5**

# **CONSULTATION AND COORDINATION**

This chapter serves as the public involvement summary report of activities to date on the environmental compliance process pursuant to the National Environmental Policy Act (NEPA) and the California Environmental Quality Act (CEQA). It also includes information on consultation and coordination activities that have occurred to date.

## **I. STUDY PARTICIPANTS**

As discussed in chapter 1, the co-lead agencies for this study are the Department of the Interior (Interior) and the State of California (California). This document was prepared by three Interior bureaus —Bureau of Reclamation (BOR), Fish and Wildlife Service (FWS), and Bureau of Indian Affairs (BIA)—and by California Department of Water Resources (CDWR).

The following entities participated in the negotiation and development of the Draft Agreement and are the most likely signatory parties (those identified by \* are mandatory signatory parties):

- Department of the Interior\*
- State of California\*
- State of Nevada (Nevada)\*
- Sierra Pacific Power Company (Sierra Pacific)\*
- Pyramid Lake Paiute Tribe of Indians (Pyramid Tribe)\*
- Truckee Meadows Water Authority
- Washoe County Water Conservation District
- City of Reno, Nevada
- City of Sparks, Nevada
- City of Fernley, Nevada
- Washoe County, Nevada
- Sierra Valley Water Company
- Carson-Truckee Water Conservancy District
- North Tahoe Public Utility District
- Truckee-Donner Public Utility District

The following cooperating and responsible agencies have jurisdiction by law over some aspect of the Agreement or contributed special expertise to this revised draft environmental impact statement/environmental impact report (revised DEIS/EIR):

- U.S. Environmental Protection Agency
- U.S. Forest Service
- U.S. Geological Survey
- U.S. Bureau of Land Management

- U.S. Army Corps of Engineers
- California Department of Fish and Game (CDFG)
- California State Water Resources Control Board
- Lahontan Regional Water Quality Control Board
- Nevada Department of Wildlife (NDOW)
- Nevada Division of Environmental Protection
- Washoe County, Nevada
- Truckee Meadows Water Authority
- Tahoe Regional Planning Agency

The following non-Federal agencies and entities with an interest in the Truckee River and reservoir operations or with technical expertise contributed to this revised DEIS/EIR:

- Nevada Department of Conservation and Natural Resources
  - Nevada Division of Water Resources
  - Nevada Division of Environmental Protection
- Truckee-Carson Irrigation District
- Churchill County, Nevada
- City of Fallon, Nevada
- Carson Water Subconservancy District
- Lahontan Valley Environmental Alliance
- Newlands Water Protective Association
- Lyon County, Nevada
- California Resources Agency
- Del Oro (Donner Lake) Water Company
- Glenshire Mutual Water Company
- South Tahoe Public Utility District
- Truckee River Basin Water Group
  - Tahoe-Truckee Sanitation Agency
  - Town of Truckee
  - Nevada County
  - Placer County
  - Sierra County
  - North Tahoe Public Utility District
  - Tahoe City Public Utility District
  - Truckee Donner Public Utility District
  - Truckee Donner Recreation and Park District
  - Northstar Community Service District
  - Sierra Valley Water Company
  - Alpine Springs County Water District
  - Squaw Valley Mutual Water Company
  - Squaw Valley Public Service District
  - Poulsen Water Company
  - Placer County Water Agency
  - Tahoe Resource Conservation District

## **II. AGENCY CONSULTATION**

Concurrent with preparation of this document, agency coordination and consultation have been or are in the process of being conducted and are described in this section.

### **A. Fish and Wildlife Coordination Act Consultation**

The Fish and Wildlife Coordination Act (FWCA) requires Federal agencies to coordinate with FWS and State wildlife agencies during the planning of new projects or for modifications of existing projects so that wildlife conservation receives equal consideration with other features of such projects throughout the agencies' planning and decision making processes (44 Federal Register [FR] 29300). Wildlife resources will be conserved in action agency project planning and approval by minimizing adverse effects, compensating for wildlife resources losses, and enhancing wildlife resource values (44 FR 29307).

BOR's objectives regarding fish and wildlife resources are to afford Federal and State fish and wildlife agencies the opportunity to participate actively in planning for projects that could affect fish and wildlife resources, to ensure that the public is fully informed regarding fish and wildlife resource matters and that their view are considered, and to ensure that fish and wildlife resources are fully considered in BOR's decisionmaking process by integrating such considerations into project planning, NEPA compliance procedures, financial and economic analyses, authorizing documents, project implementation, and during operation and maintenance of projects. FWCA compliance can be carried out prior to or at the same time BOR is complying with NEPA regulations.

Compliance with FWCA requires the following (44 FR 29307):

- Consultation between FWS, State fish and wildlife agencies, and the action agencies.
- Opportunity for FWS and State wildlife agencies to report their recommendations.
- Consideration of FWCA report recommendations.
- Incorporation of the FWCA report as an integral part of the decisionmaking process.

Chapters 1 and 2 and the "Biological Resources" sections of chapter 3 of this document, including the sections on mitigation and conservation measures, are the same as would appear in the main body of a draft FWCA report for the Truckee River Operating Agreement (TROA). The only portion not included in the revised DEIS/EIR is a list of nonmandatory enhancement measures to be recommended for implementation should opportunities arise. FWS is preparing a description of these measures to be included as an attachment to the final EIS/EIR following coordination with State wildlife agencies.

## **B. Endangered Species Act Consultation**

Section 7 of the Endangered Species Act of 1973, as amended (ESA), prohibits Federal agencies from authorizing, funding, or carrying out activities that are likely to jeopardize the continued existence of a listed species or destroy or adversely modify its critical habitat. By consulting with FWS before initiating projects, agencies review their actions to determine if these could adversely affect listed species or their habitat. Through consultation, FWS works with other Federal agencies to help design their programs and projects to conserve listed and proposed species. Regulations for the consultation process can be found at 50 Code of Federal Regulations (CFR) part 402.

Because a number of listed species either occur on Federal lands or are potentially affected by Federal activities, FWS coordination with other Federal agencies is important to species conservation and may help prevent the need to list candidate species.

Consultation with FWS pursuant to Section 7 of the ESA is required before the Secretary of the Interior (Secretary) may sign the Agreement to ensure it will not jeopardize the continued existence of any listed species or destroy or adversely modify its critical habitat. This revised DEIS/EIR serves as a Biological Assessment for the formal consultation process. FWS will follow its guidance for consultation, as specified in the “Endangered Species Consultation Handbook,” throughout this process.

## **C. Cultural Resources Consultation**

Federal law requires Federal agencies to consider the effects of their undertakings on cultural resources. The National Historic Preservation Act of 1966 (NHPA), as amended, is the basic Federal law governing preservation of cultural resources of national, regional, State, and local significance. Specifically, section 106 of NHPA requires each Federal agency to consider the effect of its actions on “any district, site, building, structure, or object that is included in or eligible for inclusion in the National Register.” Furthermore, an agency must give the Advisory Council on Historic Preservation, an independent Federal agency created by the NHPA, an opportunity to comment on any undertakings that could affect historic properties. Procedures for meeting section 106 requirements are defined in 36 CFR 800. Other Federal legislation further promotes and requires the protection of historic and archeological resources by the Federal Government. Among these laws are the Archeological Resources Protection Act and the Native American Graves Protection and Repatriation Act, both as amended.

During 1995, discussions began with the Fallon Paiute-Shoshone Tribes, Pyramid Tribe, Reno-Sparks Indian Colony, and Washoe Tribe regarding traditional cultural properties that may be in the study area. Discussions continue as needs dictate. In May 2003, contact was reinitiated with the Pyramid Lake Paiute Tribal Department of Water Resources to hear new concerns about habitat and spawning issues with the lake’s native cui-ui and Lahontan cutthroat trout (LCT). Discussions also were initiated with the Nevada and California State Historic Preservation Offices (SHPO); these discussions are ongoing as needs dictate. For example, requests for any documented cultural resource surveys since 1995 were made with the appropriate regional information centers of the California Historical Resource

Information System (a division of the California SHPO), as well as the Nevada SHPO. These findings have been incorporated into this revised DEIS/EIR.

Known cultural resources and probable impacts are described under “Cultural Resources” in chapter 3; this information is supplemented, in detail, in the Cultural Resources Appendix. Consultation on any significant adverse effects and mitigation, if needed, will be continued by the responsible entity(ies) when a final action is identified.

#### **D. Indian Trust Resources Consultation**

As discussed in chapter 3, Indian trust resources are legal interests in property or natural resources held in trust by the United States for Indian tribes or individuals. The Secretary is the trustee for the United States on behalf of Indian tribes. All Interior agencies share the Secretary’s duty to act responsibly to protect and maintain Indian trust resources reserved by or granted to Indian tribes or Indian individuals by treaties, statutes, and Executive orders.

Consultation with individual Indian tribes in the study area includes the following:

- Pyramid Tribe: Pyramid Lake Indian Reservation, which includes Pyramid Lake in Nevada.
- Reno-Sparks Indian Colony: Reno and Hungry Valley in Nevada.
- Fallon Paiute-Shoshone Tribes: Fallon Paiute-Shoshone Reservation and Fallon Colony in Nevada.
- Washoe Tribe of Nevada and California: colonies of Carson City, Dresslerville, Stewart, Washoe Ranch (in Nevada) and Woodsford (in California), Pine Nut allotments (in Nevada), and cultural interests at and near Lake Tahoe.

Known assets and effects are described under “Indian Trust Resources” in chapter 3. Consultation and coordination with the tribes will continue through completion of the NEPA process and during implementation of the Agreement.

### **III. INPUT TO DECISIONMAKING PROCESS**

Input to the decisionmaking process came from several sources, including the policy, legal, and technical representatives of the negotiating parties of the Agreement and the public, including the Truckee River Basin Water Group. The negotiating parties represent the interests of a broad spectrum of agencies and entities that would be affected by modifying operations of Truckee River reservoirs. The Truckee River Basin Water Group is a local, community-based group that provides a forum for public participation in the decisionmaking process. Input from the general public and other interested and involved agencies was sought through a structured public involvement process.

## **A. Negotiating Parties**

As described in chapter 2, “Alternatives Development Process,” the negotiating parties agreed upon a Draft Agreement, represented in this document as the TROA Alternative. The negotiators and various subgroups have met periodically to discuss issues and to prepare and review successive drafts of the Agreement. The most recent Agreement was completed in October 2003.

A steering committee, made up of representatives of the negotiators, lead agencies, cooperating agencies, and other participating agencies and organizations, met from May 1992 to 1996. The steering committee was considered a first line of public involvement and provided input from individual member agencies and their publics.

## **B. Truckee River Basin Water Group**

Section 15201 of the CEQA Guidelines states, “Public participation is an essential part of the CEQA process.”

To provide a mechanism for such public participation during negotiation of the Agreement and preparation of the revised DEIS/EIR, the Truckee River Basin Water Group (TRBWG), regularly conducts meetings that are opened to the public for discussion, review, and comment on Agreement-related issues.

Each of the participants represents and comments as part of his or her constituent interest group. The open exchange of information and ideas serves both the community and Federal and State entities whose programs may affect local residents. TRBWG is not an advisory group under the Federal Advisory Committee Act. Input from the group and its constituencies are provided to CDWR and, through them, to the management team and technical analysts.

## **C. Public Involvement**

Public involvement is a process by which interested and affected individuals, organizations, agencies, and governmental entities are consulted and included in the decisionmaking process. The public involvement process is used to solicit public input on issues surrounding the action and alternatives development as well as to inform the public regarding studies performed for the document.

The objectives of the structured public involvement process were initially laid out in a plan of study dated August 1992. Process details were defined in the public involvement plan, a document created early in the course of the study. Public involvement is an ongoing effort, and the plan has been updated to reflect the changes in process in NEPA/CEQA compliance.



## **1. Scoping Process**

An early and open public scoping process is required as part of EIS preparation (49 CFR, part 1501.7) and promoted as part of EIR preparation (California Public Resources Code, section 21082.1). Public scoping is a continuing and integral part of the decision process, environmental review, and documentation for the revised DEIS/EIR. Scoping is designed to encourage the general public and governmental agencies to:

- Identify issues, concerns, and possible impacts
- Identify existing information sources
- Develop alternatives

### ***a. Notice of Intent/Notice of Preparation***

The formal public NEPA/CEQA scoping process began with a publication of a Notice of Intent (Federal) in the Federal Register on July 21, 1991, and publication of a Notice of Preparation (California) on June 27, 1991. At the same time, a news release was issued from BOR's Mid-Pacific Regional Office. Both the Notice of Intent and the news release announced locations and times for public scoping meetings.

The Notice of Intent for the revised DEIS/EIR was published in the Federal Register on April 15, 2004, and a Notice of Preparation was published on April 16, 2004. At the same time, a news release was issued from BOR's Mid-Pacific Regional Office. The Notice of Intent, Notice of Preparation, and press release announced the points of contact and a website for further information.

### ***b. Public Scoping Meetings***

Five public scoping meetings were held July 22-25, 1991, in Truckee and South Lake Tahoe, California; and Reno, Nixon, and Fallon, Nevada. A total of 130 people attended the meetings. Oral comments were recorded, and written comments were received from 13 individuals. The public was specifically asked to identify the issues, concerns, and alternatives to be addressed in the DEIS/EIR. Comments received as a result of the public scoping meetings are contained in the Report on Scoping Comments, Truckee River Operating Agreement, dated November 1991.

Public and agency input received from the scoping meetings was used to define the major public issues related to modifying operations of Truckee River reservoirs. The following were identified as major public issues:

- Endangered, threatened, and candidate species
- General fish and wildlife
- Recreational use
- Water quality

These issues were considered by the negotiators during development of the February 1998 TROA Alternative and alternatives analyzed as part of the Report to the Negotiators. (See chapter 2.)

## **2. Other Public Meetings**

During the course of the studies, other public meetings were held to confirm analysis of the major public issues and to invite public input into the process of identifying alternatives to be evaluated.

Four public meetings were held August 2-5, 1993, one each in Truckee, California; and Reno, Nixon, and Fallon, Nevada. The purpose of the meetings was to review the public issues, describe the alternatives identification process, and solicit public input on identifying the alternatives.

In addition to the public meetings described above, separate meetings were held in Nixon, Nevada, with representatives of the Pyramid Tribe to ensure a clear understanding of public issues related to the tribe and to identify Indian trust resources. This consultation is a continuing process, as described under “Indian Trust Resources” section in chapter 3.

## **3. Public Meetings and Hearings Following Release of February 1998 DEIS/EIR**

On March 13, 1998, Interior and California released the DEIS/EIR (dated February 1998) for public review and comment. The comment period for this document was originally scheduled to end in May 1998, but was extended through June 29, 1998, at the request of several negotiating parties.

In March 1998, shortly after release of the document, public information meetings were held at seven locations in the study area to explain the organization, content, and general conclusions of the document. The meetings were held in South Lake Tahoe, Tahoe City, and Truckee, California; and in Nixon, Sparks, Fernley, and Fallon, Nevada.

Public hearings were held in May 1998 to receive public comments on the DEIS/EIR. These hearings were held in Elks Point, Nevada; Truckee, California; Fallon, Nevada; Fernley, Nevada; Nixon, Nevada; and Sparks, Nevada. Written comments on the draft document and proposed action were received through June 1998. In all, 27 public speakers commented at the hearings and 116 letters and one phone message were received as comments on the DEIS/EIR.

The comments received on the February 1998 DEIS/EIR were used to help focus and refine this revised DEIS/EIR. Additionally, copies of all comments were provided to the negotiating parties for their information. Those comments addressing the text of or concepts in the Agreement required consideration by the parties because any changes to the Agreement had to be accepted by at least the mandatory signatories before they could become part of the proposed action. Comments received on negotiation issues influenced

subsequent negotiations. In 2003, TRBWG requested and received copies of the comments under the Freedom of Information Act.

Much effort went into addressing comments received. As a result, numerous changes were made to the Truckee River Operations Model and the scope of the revised DEIS/EIR study was expanded to address a portion of Lahontan Valley.

The comments were divided into two categories: (1) general comments about the NEPA/CEQA process and the DEIS/EIR and (2) comments regarding the Agreement and negotiation process. NEPA/CEQA comments were further categorized by resource: hydrology; water quality; sediment, biological resources; recreation; and economic, social, and cultural resources. Table 5.1 summarizes NEPA/CEQA-related comments.

TROA and its authorizing legislation, Public Law (P.L.) 101-618, only allow the Agreement to be changed in the same manner in which it was negotiated and adopted. Therefore, any amendments to the Agreement itself (made after it enters into effect) would have to be negotiated and agreed to by the signatory parties.

Eighty-four comments related to the Agreement negotiation process were submitted during the 1998 comment period. Comments focused on the following:

- Depletion (measuring depletion impacts).
- Donner Lake issues (surface elevation, fish habitat and flows, lake ownership).
- Flood potential and flood control (flood control plans, set-back distance, groundwater development).
- Instream flows and fish/wildlife issues (mandatory minimum instream flows for fish and habitat, LCT recovery plan, ramping of reservoir releases, providing cool water in streams for fish, flow, and temperature monitoring, minimum pools in reservoirs for fish and habitat, impacts to fishery, oversight of releases, penalties for failure to comply with TROA).
- Mitigation (clarify/incorporate process to mitigate significant adverse effects to environment, monitor environmental factors for impacts).
- Negotiation process (insufficient public participation or input; clarify process of identifying potential signatories and negotiating the agreement; Sierra Pacific had undue influence in drafting TROA; having a provision for changing the Agreement after it is signed; the process should have included a provision for performance criteria and monitoring).
- Newlands Project (Truckee Canal diversions).

Table 5.1.—Summary of comments received on February 1998 draft TROA EIS/EIR

Category	Number received	Process-related concerns	Issue considerations
NEPA - related comments	11	Whether the proposed action reviewed by the DEIS/EIR was properly described  Completeness of the review process	Local effects  Flood control  Water rights
Water quality	8	Fuller description of the process used to analyze/model water quality  If this detailed information was available to the public	Water quality effects due to erosion  Downstream flows  Reduced streamflows in dry years
Sediment	10	Accuracy and completeness of the data used  Availability of the source (modeling) data	Sediment effects due to early releases  Sediment changes may effect LCT spawning/rearing, cui-ui runs, and shoreline erosion
Biological resources	141	Accuracy, completeness and source of the data used  Availability of the source (modeling) data  Conflicting references/ explanations, apparent discrepancies	Effects on species including: trout (rainbow, LCT and brown), white faced ibis, gulls, ducks, mountain yellow legged frog, bald eagle, geese, marten, osprey, white pelican and cui-ui.  Questions related to effects and impacts on Tahoe yellow cress and cottonwood  Effects on fish and other water related species, including: releases, stream and river flows, recovery, spawning, water temperature, passage and erosion, and others
Recreation resources	27	Accuracy and completeness of the data or statements	Effects on rafting, boating, windsurfing, fishing and scenery  Effects of increased or decreased flows on recreation activities and economic benefits  It was noted that TROA was restricted in what it could do regarding recreation activities in that it may not interfere with the exercise of vested water rights unless those rights are voluntarily relinquished
Economic Resources	30	Accuracy and completeness of the data or statements	Whether economic effects were adequately considered in such areas as fishing/recreation, property damage due to flood, logging/sawmill operations, visitation response to water levels, conversion of agriculture rights to municipal and industrial water use, hydroelectric power generation, additional storage for Sierra Pacific, and local economic impacts (versus regional)
Cultural Resources	31	Accuracy and completeness of the data used (such comments often focused on whether a location (road, lake, dam, etc.) or term was correctly stated)	Whether a particular analysis was extensive enough in such areas as drainage problems, defining the primary area for the cultural resource, ethnographic consideration, and the effects of secondary natural transformations

- Hydroelectric power generation (clarify Sierra Pacific's waiver of single-purpose power and compensation for lost power).
- Recreation (minimum reservoir pools for recreation, adequate flows for recreation such as rafting, preserving recreation).
- Relation to other laws (compliance with State laws, P.L. 101-618, and Clean Water Act).
- Water quality (effect on water quality of Lake Tahoe and Truckee River downstream from Lake Tahoe; inadequate guarantees for water quality or on ways to measure impacts, impacts from sedimentation).
- Water rights (increased allocation to California; allocation percentage counted for snowmaking in California; California water spill priority, private ownership rights).

#### **4. Other Public Contact**

In addition to the public scoping, meetings, and hearings, numerous contacts were made with the general public and other agencies. These personal contacts, telephone calls, and mail provided input into various aspects of the study effort, particularly the cumulative effects analysis contained in chapter 4.